

United States Courts  
Southern District of Texas  
FILED

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

*MAR 14 2005  
Michael N. Milby, Clerk of Court*

FISHERMAN'S HARVEST, INC., §  
C. JOE NELSON, JR., DORIS MAE §  
NELSON, VANESSA JO NELSON §  
VALLEJO, VICKIE JO NELSON §  
SALAZAR, CHILDRESS SEAFOOD, §  
INC., W. F. CHILDRESS §  
AND ALTON LEE KELLY §  
§  
VS. §  
§  
PBS&J FORMERLY ESPEY, HUSTON §  
& ASSOCIATES, INC., BERTUCCI §  
CONTRACTING CORPORATION §  
AND WEEKS MARINE, INC. §  
§  
CIVIL ACTION NO. \_\_\_\_\_  
JURY TRIAL DEMANDED

**PLAINTIFFS' ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Come now, FISHERMAN'S HARVEST, INC., C. JOE NELSON, JR., DORIS MAE NELSON, VANESSA JO NELSON VALLEJO, VICKIE JO NELSON SALAZAR, CHILDRESS SEAFOOD, INC., W. F. CHILDRESS and ALTON LEE KELLY, hereinafter referred to as "Plaintiffs," complaining of and about PBS&J FORMERLY ESPEY, HUSTON & ASSOCIATES, INC., BERTUCCI CONTRACTING CORPORATION and WEEKS MARINE, INC., hereinafter referred to as Defendants, whether one or more, and for cause of action would show unto the Court the following:

I.  
**JURISDICTION AND VENUE**

1. This Court has jurisdiction and venue is proper in the United States District Court for the Southern District of Texas because all events giving rise to this action occurred in Chambers County and/or Galveston County, Texas, and Plaintiffs are

residents of Chambers County, Texas. This Court has jurisdiction over all claims herein asserted by virtue of Federal Question jurisdiction under 28 USC § 1331. This Court further has pendant jurisdiction over all State law claims herein asserted.

**II.**  
**PARTIES AND SERVICE**

2. Plaintiff, FISHERMAN'S HARVEST, INC., is a Texas corporation.
3. Plaintiffs C. JOE NELSON, JR. and DORIS MAE NELSON, bring this action individually and as husband and wife and as shareholders in FISHERMAN'S HARVEST, INC. Plaintiffs reside in Chambers County, Texas.
4. Plaintiff, VANESSA JO NELSON VALLEJO, brings this action individually. Plaintiff resides in Chambers County, Texas.
5. Plaintiff, VICKIE JO NELSON SALAZAR, brings this action individually. Plaintiff resides in Chambers County, Texas.
6. Plaintiff, CHILDRESS SEAFOOD, INC., is a Texas corporation.
7. Plaintiff, W. F. CHILDRESS, brings this action individually and as a shareholder in CHILDRESS SEAFOOD, INC. Plaintiff resides in Chambers County, Texas.
8. Plaintiff, ALTON LEE KELLY, brings this action individually. Plaintiff resides in Chambers County, Texas.
9. Defendant, PBS&J FORMERLY ESPEY, HUSTON & ASSOCIATES, INC., is a Texas corporation and may be served with process by serving its registered agent for service, C. T. Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201, by certified mail, return receipt requested, delivery restricted to addressee only, in accordance with F.R.Civ.P. 4.

10. Defendant, BERTUCCI CONTRACTING CORPORATION, is a Louisiana corporation and may be served with process by serving its registered agent for service, Anthony J. Zelenka, #7 River Road, Jefferson, Louisiana 70121, by certified mail, return receipt requested, delivery restricted to addressee only, in accordance with F.R.Civ.P. 4.
11. Defendant, WEEKS MARINE, INC., is a New Jersey corporation and may be served with process by serving its registered agent for service, Patricia Driggers, 106 DeRouche Avenue, Bourg, Louisiana 70343, by certified mail, return receipt requested, delivery restricted to addressee only, in accordance with F.R.Civ.P. 4.

III.  
FACTS

12. Plaintiffs are the owners and/or beneficial owners of one or more oyster leases located in Galveston Bay and/or Trinity Bay, as well as one or more businesses involved in the harvest, processing and sale of oysters in Smith Point, Chambers County, Texas.
13. Defendants are design engineers and/or contractors that contracted with the United States Army Corp of Engineers to provide one or more services in regard to the maintenance dredging project known as the Trinity River and Tributaries, Texas Maintenance Dredging, Channel to Smith Point Galveston Bay, Galveston and Chambers Counties, Texas, hereinafter referred to as "the project in question."
14. Defendant, PBS&J, was retained as the designer engineer and/or design consultant on behalf of the United States Army Corp of Engineers to plan and/or

design and/or to issue specifications for, perform testing services and/or monitor the maintenance dredging in regards to the project in question.

15. Defendant, WEEKS MARINE, INC., was the dredge contractor retained, hired and contracted by the United States Army Corp of Engineers to perform the maintenance dredging of the channel in regards to the project in question.
16. Defendant, BERTUCCI CONTRACTING CORPORATION, by contract or subcontract, was the entity responsible for the design and/or construction and implementation of the “geo tubes” and sediment barriers for use in the dredging project in question. Defendant, BERTUCCI CONTRACTING CORPORATION, was further responsible, in whole or in part, for the building of the beneficial use areas for the project in question along with Defendant WEEKS MARINE.
17. The Defendants named hereinafter are respectively referred to as Defendant PBS&J, Defendant BERTUCCI and Defendant WEEKS MARINE, and will hereinafter be collectively referred to as Defendants.
18. Whenever it is alleged that Defendants committed an act, error, omission, or the conduct described therein, it is meant that such acts, errors, omissions and conduct was committed by those acting on behalf of Defendants, including, but not limited to, all agents, officers, employees, representatives, servants, shareholders and directors, all of whom were at all times material hereto acting within the course and scope of their employment and/or agency and/or with the apparent, expressed and/or implied authority of Defendants, and for whom Defendants are responsible in their corporate capacity.

19. Defendants, whose conduct is set forth more fully below, were involved in the planning, designing, implementation and dredging for this maintenance and dredging project, upon which such services contributed to, and were relied upon by the United States Army Corp of Engineers for the design, implementation, construction and performance of one or more duties and/or aspects of the dredging project in question.
20. Each of the Defendants were aware, based upon information provided, prior to the beginning of the project in question in July of 2003, that the project in question would and/or was likely to cause serious and substantial damages to the oyster leases owned by Plaintiffs and public oyster areas from which Plaintiffs dredged and obtained oysters in the Trinity Bay and Galveston Bay areas near the dredging project in question.
21. Defendants were further aware that the failure to implement appropriate procedures in the design and/or construction of the project in question and/or proper precautions while dredging would result in the discharge of one or more toxic and/or dangerous sediments, and/or other sediments that would greatly damage and/or destroy Plaintiffs' oysters reefs as well as the reefs and/or silt which were considered "public" and upon which Plaintiffs dredged for oysters for sale in their respective businesses.
22. The actual dredging began in July of 2003, and continued until August of 2003. Subsequent to the dredging of the project in question, it was determined that sediments, silt and by-products from the dredge operations had spilled upon and/or was discharged upon one or more of Plaintiffs' leases causing extensive

damage, if not the total destruction, to one or more of Plaintiffs' leases as well as the partial damage to and/or the complete destruction of one or more "public" areas upon which Plaintiffs harvested and/or dredged oysters. It was further determined after July of 2003 that the geo tubes had failed and/or such Defendants did not properly construct the barriers necessary to discharge of silt, sediments and/or other toxic materials on to Plaintiffs' leases.

IV.  
**FIRST CAUSE OF ACTION  
FOR NEGLIGENCE AGAINST DEFENDANT PBS&J**

23. Plaintiffs re-alleged the allegations contained above and further allege that Defendant, PBS&J, was negligent in the following:

1. In failing to properly and adequately perform the underwater survey in the channels of Smith Point in Chambers County and Galveston County, Texas, such survey being relied upon by the United States Army Corp of Engineers Galveston District;
2. In failing to properly design the geo tubes on behalf of the United States Army Corp of Engineers, to efficiently and appropriately safeguard and protect Plaintiffs' reefs and/or the "public" reefs upon which the Plaintiffs dredge oysters in Galveston County and Chambers County, Texas;
3. In failing to implement or design proper "beneficial use" areas and/or retaining areas for the sediments caused by the dredging in question, resulting in the total loss of one or more of Plaintiffs' leases as well as the loss of the use of "public" lands in which the Plaintiffs dredge oysters;
4. In failing to properly supervise and/or implement any design plan provided by PBS&J in regards to the dredging problem in question;
5. In failing to provide proper and adequate documentation to the United States Army Corp of Engineers regarding the necessary precautions that would need to be taken prior to the beginning of the dredge project in question;
6. In failing to comply with one or more state and/or federal statutes including the Federal legislature known as the Clean Water Act and Texas state

equivalent in regards to the activities that such Defendant was performing in regards to the project in question;

7. In committing one or more violations of law in failing to comply with the environmental impact study for the project in question and/or providing faulty and/or inaccurate information in the environmental impact study for the project in question;
8. In failing to insure that the project would be completed in accordance with the environmental impact study for the project in question;
9. In failing to adequately assess the proper amount of sediment or discharge materials and types there from during the dredging operations; and
10. In committing such other acts of negligence and/or gross negligence as will be shown at trial.

V.

**SECOND CAUSE OF ACTION**  
**FOR NEGLIGENCE AGAINST DEFENDANT BERTUCCI**

24. Plaintiffs re-allege the allegations contained above and further allege that Defendant, BERTUCCI, was negligent in the following:

1. In starting and/or allowing the operation to continue during the inclement weather, and not on schedule;
2. In failing to provide adequate and proper safeguards to prevent the release or discharge of materials on the Plaintiffs' leases and the "public" areas in which Plaintiffs dredge oysters;
3. In failing to adequately advise the United States Army Corp of Engineers as to the problems and/or potential problems occurring on the project and failing to properly warn interested parties in the area such as Plaintiffs of the dangers of the dredge operations in question if adequate safeguards are not provided;
4. In failing to maintain control of its employees on the project in question, and allowing silt and/or other contaminants to be deposited directly and/or indirectly onto Plaintiffs' leases;
5. In failing to comply with the Federal Clean Water Act and the equivalent State Act for allowing the discharge of silt and other contaminants into Galveston Bay and/or Trinity Bay during the project in question;

6. In failing to prepare and/or build its portions of the dredging project in question in accordance with the specifications for the project and in accordance with the environmental impact study requirements for the project in question;
7. In failing to construct and/or maintain the geo tubes and spill containment areas in a manner so as to prevent the discharge and leakage of sediments, silt and other toxic substances onto Plaintiffs' leases; and
8. In committing further negligence as will be shown at trial.

VI.

**THIRD CAUSE OF ACTION**  
**FOR NEGLIGENCE AGAINST DEFENDANT WEEKS MARINE**

25. Plaintiffs re-allege the allegations contained above and further allege that Defendant, WEEKS MARINE, was negligent in the following:

1. In starting and/or allowing the operation to continue during the inclement weather, and not on schedule;
2. In failing to provide adequate and proper safeguards to prevent the release or discharge of materials, silt and other sediments and/or toxic materials on the Plaintiffs' leases and the "public" areas in which Plaintiffs dredge oysters;
3. In failing to adequately advise the United States Army Corp of Engineers as to the problems occurring on the project and failing to properly warn interested parties in the area such as Plaintiffs of the dangers caused by the dredge operations if adequate safeguards are not provided;
4. In failing to maintain control of its employees on the project in question;
5. In failing to comply with the provisions of the environmental impact study for the project in question;
6. In failing to comply with the Federal Clean Water Act and/or its State of Texas equivalent, in intentionally discharging and/or allowing silt, sediments and other toxic materials to be discharged into the waters near Plaintiffs leases and the public areas upon which Plaintiffs dredge oysters in Galveston and/or Trinity Bay;
7. In failing to comply with the requirements of the environmental impact study for the project in question; and
8. In committing further negligence as will be shown at trial.

VII.

CAUSES OF ACTION AGAINST  
ALL DEFENDANTS FOR NEGLIGENCE AND NEGLIGENCE PER SE'

26. Plaintiffs will respectfully show at all times material hereto, Defendants, jointly and severally, committed one or more acts, errors, or omissions in violation of one or more state or federal statutes.

VIII.

CAUSE OF ACTION AGAINST  
ALL DEFENDANTS FOR GROSS NEGLIGENCE

27. Plaintiffs will respectfully show that the acts, errors, or omissions committed by Defendants were committed knowingly and therefore, Defendants are guilty of gross negligence.

IX.

28. Plaintiffs will respectfully show that Defendants have violated the Clean Water Act in intentionally discharging and/or allowing silt, sediments and other toxic materials to be discharged into the waters near Plaintiffs leases and the public areas upon which Plaintiffs dredge oysters in Galveston and/or Trinity Bay.

X.  
DAMAGES

29. The conduct of Defendants as described above was a cause, proximate cause and/or producing cause of the damages sustained by Plaintiffs.
30. All of the allegations contained in the previous paragraphs are realleged herein.
31. Plaintiffs further allege that as a result of such acts, errors and omissions on the part of Defendants as described above, Plaintiffs have been made to suffer the following elements of damages:

1. Actual damages for Plaintiffs, FISHERMAN'S HARVEST, INC., C. JOE NELSON, JR. and DORIS MAE NELSON, in an amount that exceeds \$4,288,467.00;
2. Emotional distress and/or exemplary damages and all other damages as allowed by law for Plaintiffs, FISHERMAN'S HARVEST, INC., C. JOE NELSON, JR. and DORIS MAE NELSON, in an amount in excess of \$8,000,000.00, but not more than \$10,000,000.00;
3. Actual damages for Plaintiff, VANESSA JO NELSON VALLEJO, in an amount that exceeds \$279,675.00;
4. Emotional distress and/or exemplary damages and all other damages as allowed by law for Plaintiff, VANESSA JO NELSON VALLEJO, in an amount in excess of \$600,000.00, but not more than \$100,000.00;
5. Actual damages for Plaintiffs, VICKIE JO NELSON SALAZAR, in an amount that exceeds \$5,814,483.00;
6. Emotional distress and/or exemplary damages and all other damages as allowed by law for Plaintiffs, VICKIE JO NELSON SALAZAR, in an amount in excess of \$11,000,000.00, but not more than \$15,000,000.00;
7. Actual damages for Plaintiffs, CHILDRESS SEAFOOD, INC. and W. F. CHILDRESS, in an amount that exceeds \$5,359,558.00;
8. Emotional distress and/or exemplary damages and all other damages as allowed by law for Plaintiffs, CHILDRESS SEAFOOD, INC. and W. F. CHILDRESS, in an amount in excess of \$11,000,000.00, but not more than \$15,000,000.00;
9. Actual damages for Plaintiffs, ALTON LEE KELLY, in an amount that exceeds \$3,221,333.00;
10. Emotional distress and/or exemplary damages and all other damages as allowed by law for Plaintiffs, ALTON LEE KELLY, in an amount in excess of \$6,000,000.00, but not more than \$10,000,000.00;
11. Actual damages, damage for emotional distress, and/or exemplary damages for all Plaintiffs from and after the date this petition is filed and continuing until the date of trial, in an amount to be determined, as the nature of these damages is continuing and progressive; and
12. Fees for legal expenses through trial at a fair and reasonable rate.

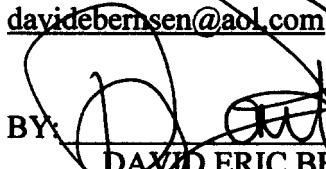
PRAAYER

32. WHEREFORE, PREMISES CONSIDERED, Plaintiffs, FISHERMAN'S HARVEST, INC., C. JOE NELSON, JR., DORIS MAE NELSON, VANESSA JO NELSON VALLEJO, VICKIE JO NELSON SALAZAR, CHILDRESS SEAFOOD, INC., W. F. CHILDRESS and ALTON LEE KELLY, respectfully pray that Defendants be cited to appear and answer herein, and that upon trial of this case, Plaintiffs do have and recover from Defendants, jointly and severally:

1. Actual damages in an amount that exceeds the minimal jurisdictional limits of this Court;
2. All punitive and/or exemplary damages in an amount that exceeds the minimal jurisdictional limits of this Court;
3. Pre-judgment and post judgment interest as allowed by law;
4. Reasonable attorney's fees and all costs of Court herein incurred; and
5. Such other and further relief to which Plaintiffs may show themselves justly entitled, at law or in equity.

Respectfully submitted,

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BY:   
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ATTORNEYS FOR PLAINTIFF,  
ALTON LEE KELLY

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Fisherman's Harvest, Inc., C. Joe Nelson, Jr., Doris Mae Nelson, Vanessa Jo Nelson Vallejo, Vickie Jo Nelson Salazar, Childress Seafood, Inc., W.

(b) County of Residence of First Listed Plaintiff Chambers  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

PBS&J Formerly Esprey, Huston & Associates, Inc., Bertucci Contracting Corporation and Weeks Marine, Inc.

County of Residence of First Listed United States Courts  
District of Texas  
(IN U.S. PLAINTIFF CASES)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  
**MAR 14 2005**

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Office of David E. Bernsen, P.C., P. O. Box 822, Beaumont, TX 77704; (409) 832-1957 ("SEE ATTACHMENT")

Attorneys (If Known)

Michael L. Kirby, Clerk of Court

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input checked="" type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

110 Insurance  
 120 Marine  
 130 Miller Act  
 140 Negotiable Instrument  
 150 Recovery of Overpayment & Enforcement of Judgment  
 151 Medicare Act  
 152 Recovery of Defaulted Student Loans (Excl. Veterans)  
 153 Recovery of Overpayment of Veteran's Benefits  
 160 Stockholders' Suits  
 190 Other Contract  
 195 Contract Product Liability  
 196 Franchise

**PERSONAL INJURY**  
 310 Airplane  
 315 Airplane Product Liability  
 320 Assault, Libel & Slander  
 330 Federal Employers' Liability  
 340 Marine  
 345 Marine Product Liability  
 350 Motor Vehicle  
 355 Motor Vehicle Product Liability  
 360 Other Personal Injury

**PERSONAL PROPERTY**  
 362 Personal Injury - Med. Malpractice  
 365 Personal Injury - Product Liability  
 368 Asbestos Personal Injury Product Liability  
 370 Other Fraud  
 371 Truth in Lending  
 380 Other Personal Property Damage  
 385 Property Damage Product Liability

610 Agriculture  
 620 Other Food & Drug  
 625 Drug Related Seizure of Property 21 USC 881  
 630 Liquor Laws  
 640 R.R. & Truck  
 650 Airline Regs.  
 660 Occupational Safety/Health  
 690 Other

**CONTRACTS**  
 700 Contracts  
 710 Fair Labor Standards Act  
 720 Labor/Mgmt. Relations  
 730 Labor/Mgmt. Reporting & Disclosure Act  
 740 Railway Labor Act  
 790 Other Labor Litigation  
 791 Empl. Ret. Inc. Security Act

422 Appeal 28 USC 158  
 423 Withdrawal 28 USC 157  
 820 Copyrights  
 830 Patent  
 840 Trademark

**ADMINISTRATIVE PRACTICES, PROCEDURES & ACTS**  
 861 HIA (1395ff)  
 862 Black Lung (923)  
 863 DIWC/DIWW (405(g))  
 864 SSI Title XVI  
 865 RSI (405(g))

**CRIMINAL**  
 870 Taxes (U.S. Plaintiff or Defendant)  
 871 IRS—Third Party 26 USC 7609

400 State Reapportionment  
 410 Antitrust  
 430 Banks and Banking  
 450 Commerce  
 460 Deportation  
 470 Racketeer Influenced and Corrupt Organizations  
 480 Consumer Credit  
 490 Cable/Sat TV  
 810 Selective Service  
 850 Securities/Commodities/ Exchange  
 875 Customer Challenge 12 USC 3410  
 890 Other Statutory Actions  
 891 Agricultural Acts  
 892 Economic Stabilization Act  
 893 Environmental Matters  
 894 Energy Allocation Act  
 895 Freedom of Information Act  
 900 Appeal of Fee Determination Under Equal Access to Justice  
 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 USC Section 1331**

Brief description of cause:  
Defendants acts and/or omissions caused damage to Plaintiffs' oyster leases.

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions): **JUDGE** DOCKET NUMBER \_\_\_\_\_

DATE

03/08/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**CIVIL COVER SHEET**  
**Attachment**

**Plaintiffs' Attorneys:**

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NELSON, JR., DORIS MAE NELSON,  
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